

APPEAL NO. 041441
FILED AUGUST 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 13, 2004, with the record closing on May 19, 2004. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on November 19, 2002, with a 5% impairment rating (IR) pursuant to the certification of the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, and that she had disability until February 27, 2003, but not thereafter. The claimant appealed on sufficiency of the evidence grounds, asserting that she has not yet reached MMI and she continues to suffer disability. The appeal file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

We have reviewed the complained-of determination regarding disability and conclude that the issue involved a factual question for the hearing officer to resolve. There was conflicting evidence in the record. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Sections 408.122 and 408.125 of the 1989 Act provide that a report of a Commission-appointed designated doctor shall have presumptive weight on the issues of MMI and IR, and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. The hearing officer reviewed the record and decided what facts were established. After the conclusion of the hearing in this matter, the hearing officer sent the designated doctor a letter of clarification and attached additional medical reports. The designated doctor responded, stating that his opinion remained unchanged and explaining his reasoning for such. After receiving the designated doctor's response, the hearing officer determined that the great weight of medical evidence was not contrary to the designated doctor's report. The hearing officer also reviewed the record and made determinations regarding the designated doctor's compliance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). The hearing officer considered the conflicting medical opinions regarding the date of MMI and the amount of impairment, and concluded that those differences merely constituted a difference in

medical opinion. We conclude that the hearing officer's determinations regarding MMI and IR are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DR. CT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Daniel R. Barry
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge